

STATE OF MICHIGAN  
COURT OF APPEALS

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LIONEL J. ANDERSON,

Plaintiff-Appellant,

v

DETROIT BOARD OF EDUCATION,

Defendant-Appellee.

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UNPUBLISHED

January 7, 2000

No. 216778

WCAC

LC No. 90-000426

Before: Wilder, P.J., and Bandstra and Cavanagh, JJ.

PER CURIAM.

This case is before us pursuant to the Supreme Court's order remanding this matter for consideration as on leave granted in light of *Layman v Newkirk Electric Associates, Inc*, 458 Mich 494; 581 NW2d 244 (1998). We reverse the decision of the Workers' Compensation Appellate Commission and remand this case to the magistrate for the appropriate factual findings and application of the relevant law to those findings.

Plaintiff began working for defendant as a journeyman electrician in 1979. His last day of work was June 8, 1987, when he suffered a debilitating cerebral hemorrhage. The stroke left plaintiff with permanent cognitive and physical impairments. Although plaintiff attempted to return to work with restrictions in October 1987, defendant refused to employ him with the restrictions.

Plaintiff filed a petition for mediation or hearing on March 9, 1988. The medical testimony was conflicting with regard to whether plaintiff's stroke was caused by long-term untreated hypertension, which was exacerbated by stressful incidents at work, or by a congenital aneurysm in one of the blood vessels in his brain. Following a hearing, the magistrate concluded that plaintiff had proven that he was disabled by the stroke and its sequelae by a preponderance of the evidence and that the "disability was contributed to and aggravated in a significant manner by his employment as a skilled electrician . . . pursuant to [MCL] 418.401[(2)](b) [; MSA 17.237(401)(2)(b)]." Plaintiff was granted an open award of full benefits.

Defendant appealed the decision to the WCAC, arguing that the magistrate had analyzed the case under the incorrect statute and applied the wrong definition of disability. The commission

concluded that “the magistrate failed to analyze and provided no findings of fact supporting her assertion that plaintiff was disabled pursuant to either Section 301(4) or 401(1)” and reversed the award. In lieu of granting leave to appeal, this Court reversed the commission’s decision and remanded the matter “for reconsideration on the existing record of plaintiff’s claim under applicable standards.” The order noted that “[o]nce the Commission held that the magistrate applied improper standards of disability, it should have provided for consideration of plaintiff’s claim under correct standards, which it did not do, rather than reversing the award.”

On remand, plaintiff moved to have the commission send the matter back to the magistrate for the required factual findings, but the motion was denied. The commission then reviewed the record and made its own factual findings, concluding that there was insufficient evidence to support a finding that plaintiff’s work aggravated or contributed to his disability. Plaintiff sought leave to appeal, arguing that the commission exceeded its statutory authority in reversing the magistrate. This Court denied leave to appeal from that decision. The Supreme Court held the application in abeyance pending the release of *Layman, supra*. We now commence our analysis under that holding.

Findings of fact by a magistrate in workers’ compensation proceedings are to be considered conclusive by the WCAC if those findings are “supported by competent, material, and substantial evidence on the whole record.” MCL 418.861a(3); MSA 17.237(861a)(3); *Goff v Bil-Mar Foods, Inc (After Remand)*, 454 Mich 507, 512; 563 NW2d 214 (1997). “[W]here a party claims that the WCAC has exceeded its power by reversing the magistrate, meaningful review must begin with the magistrate’s decision . . . .” *Goff, supra* at 513. The commission may not make findings of fact in the absence of findings by the magistrate. *Layman, supra* at 507.

There are a number of problems with the magistrate’s original opinion. Although she began her analysis by stating that “[i]t is undisputed that plaintiff suffered a disabling stroke,” defendant did not concede the issue of disability; in fact, one of defendant’s experts opined that plaintiff was not disabled at all and could return to work without restrictions. Moreover, the magistrate stated that she was conducting her analysis pursuant to § 401(b), apparently referring to MCL 418.401(2)(b); MSA 17.237(401)(2)(b), which refers to occupational diseases and is inapplicable to the facts at issue. Although plaintiff argues that the magistrate made factual findings that are equally applicable to an analysis under MCL 418.301(2); MSA 17.237(301)(2) because the language in § 401(2)(b) stating that “[m]ental disabilities and conditions of the aging process . . . shall be compensable if contributed to or aggravated or accelerated by the employment in a significant manner” is the same as the “significant manner” test outlined in § 301(2), the magistrate made no finding that plaintiff’s hypertension or stroke was a condition of the aging process. At least one expert testified that the stroke could have been due to a congenital defect. Consequently, the requisite factual finding that must be made prior to application of the significant manner test under either statute is absent from the magistrate’s decision. The commission acknowledged in its first opinion that the magistrate completely failed to make any findings of fact with regard to disability under *either* § 401 or § 301.

In *Layman, supra* at 505, remand to the magistrate was deemed appropriate because it was “not clear whether the magistrate based his decision on subsection 1 or subsection 2 of MCL 418.301; MSA 17.237(301).” In this case, the magistrate not only missed the right subsection, but went on to

employ an entirely inapplicable section of the statute. Thus, there can be no question that in this case the commission was required “‘to speculate regarding the facts and the legal reasoning that the magistrate relied on to reach [her] . . . conclusion,’ which it cannot do.” *Id.*, quoting *Woody v Cello-Foil Products (After Remand)*, 450 Mich 588, 597; 546 NW2d 226 (1996). Consequently, we remand the matter to the magistrate to determine whether plaintiff’s stroke and underlying hypertension were conditions of the aging process, and, if so, to determine whether the significant manner test of MCL 418.301(2); MSA 17.237(301)(2) applies to this case.

We reverse and remand. We do not retain jurisdiction.

/s/ Kurtis T. Wilder

/s/ Richard A. Bandstra

/s/ Mark J. Cavanagh